

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ENochio Ann Huley,) CASE NO. 04-62183 JPK
) Chapter 13
Debtor.)

ORDER REGARDING OBJECTION TO CLAIM

On May 21, 2004, Household Automotive Finance Corporation filed a proof of claim, docketed as claim #1, asserting an unsecured claim against the debtor in the amount of \$15,318.26. On October 14, 2004, the debtor filed an objection to this claim, to which the creditor, by counsel, responded by a response filed on November 15, 2004, docketed as docket record entry #58. Paragraph 1 of this response states that an amended claim would be filed, to assert a "deficiency balance of \$12,147.50 (petition balance less the net sale price of the vehicle)". Attached to that response was "Exhibit A", which is essentially illegible; an "auction statement" which appears to indicate that the vehicle subject to the security interest of Household Automotive Finance Corporation was sold for a gross price of \$5,450.00, and that the creditor received \$4,884.00 from the sale. A certificate of service was attached to the response indicating that debtor's counsel was served with it; however, the certificate of service was not signed and no date was stated in it as to the date of service.

The objection regarding claim #1 was mooted when claim #9 was filed on November 10, 2004. This claim states an unsecured indebtedness of \$12,147.50. The debtor, by counsel, filed an objection to claim #9 on March 30, 2005. No response to this objection has been filed.

Let's begin with paragraph 4 of this objection, which states that the "co-signer on the note has no way of determining if the car was repossessed and more importantly, whether a proper credit was given for resale if the vehicle was repossessed". As noted above, Household Automotive Finance Corporation's response to the debtor's objection to claim #1 provided

conclusive evidence that the car had been repossessed and sold. Moreover, presumably by a simple telephone call to her son, the debtor could find out whether the car was repossessed. In any event, the documentation in this record clearly establishes that the car was repossessed and sold.

Paragraph 1 of the objection asserts that documentation required by Official Form B10 has not been attached to the claim. This objection is not well taken: Attached to claim #9 is a copy of a retail installment contract signed by the debtor, and a copy of a certificate of title which evidences that title to the subject vehicle was originally issued to the debtor and Michael G. Huley as co-owners.

Paragraph 2 of the objection states that it cannot be ascertained if the amount asserted in claim #9 includes a charge for "service contract insurance" in the amount of \$1,495.00. This objection is not well taken: This cost was clearly part of the original obligation stated in the documentation attached to the proof of claim.

Paragraph 3 of the objection states that there is "no way of telling from the filed claim if payments were made, and if so, if they were properly credited as required by Office Form B10". The debtor does not state that the creditor did not properly credit payments that were made, but only that the creditor has not provided documentation which establishes that fact. There is nothing in paragraph 8 in Official Form B10 which requires the form of documentation suggested by paragraph 3 of the objection. Again, the amount of the asserted claim has *prima facie* validity, and it is up to the debtor to assert facts which sustain an objection that the amount of the claim is incorrect: this objection has not done so.

The same applies to paragraph 5 of the objection: again, that paragraph does not assert that payments made by any co-maker have not been properly credited, but only that the debtor cannot tell from the claim whether or not they were. This in essence seeks to shift the burden of rebutting the *prima facie* validity of a claim, which is the debtor's burden, back to the

creditor.

Paragraphs 6, 7 and 8 do not state any valid basis for an objection as to non-provision of documents: again, there is nothing in paragraph 8 of Official Form B10 which requires the form of documentation sought to be required by those paragraphs of the objection.

However, based upon the record before it, it appears that claim #9 does not properly take into account the proceeds of sale evidenced by the documentation which accompanied the creditor's response to the debtor's objection to claim #1. The original claim was for \$15,318.26; it appears that \$4,884.00 was received which should have been credited against that amount; and that thus, the amount stated in claim #9 is too high.

Based upon the foregoing, the Court finds that the debtor's objection to claim #9 should be sustained, solely on the basis that the record information designated above appears to establish that \$4,884.00 should have been deducted from the amount stated in claim #1, and that claim #9 does not properly do so.

IT IS ORDERED that the debtor's objection to claim #9 is sustained.

IT IS FURTHER ORDERED that Household Automotive Finance Corporation shall have 20 days from the date of entry of this order to file an amended claim, or in the alternative, to file a response to the debtor's objection to claim #9 which explains why the amount stated in claim #9 was correctly computed.

Dated at Hammond, Indiana on May 13, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Erich M. Ramsey